

STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF AIR RESOURCES

In Re: Proposed Air Pollution Control Regulation No. 45 "Rhode Island Diesel Engine Anti-Idling Program".

DECISION

Introduction

On May 15, 2007 notice was published in the Providence Journal and was mailed to interested parties announcing a public hearing and comment period to accept comments on the proposed Air Pollution Control Regulation No. 45 "Rhode Island Diesel Engine Anti-Idling Program". The public hearing was held on June 15, 2007. Written comments were entered into the record at the public hearing. The comment period closed at 4:00 pm of June 15, 2007. This decision will present the Department of Environmental Management's response to comments and the final regulation for adoption. All written and oral submissions respecting the proposed regulation were fully considered. The following is a concise statement of the principal reasons for and against the proposed regulation's adoption, and will further incorporate the reasons for overruling the considerations urged against its adoption.

The Administrative Procedures Act requires agencies proposing to amend or promulgate regulations demonstrate the need for amendment or new regulation, demonstrate that no alternative approaches considered would be as effective and less burdensome, identify any overlapping or duplicate state regulations, and determine whether the amendment or new regulation would have significant adverse economic impact on small business or any city or town. Information to comply with those requirements was included in the Fact Sheet, which was available when the Notice of Public Hearing and Comment Period was published. The Fact Sheet is appended to this decision.

Response to Comments

This section will present the Department's response to comments made at the public hearing and written comments received during the comment period. Comments were paraphrased and similar comments were grouped together. The Department's response follows each comment.

Comment: All commenters indicated support of the regulations.

Response: *Comments noted. No response necessary.*

Comment: One commenter requested that DEM continue to consider tightening restrictions on idling and supported the phase out of the exemption for an occupied vehicle with a sleeper berth compartment in section 45.5.5.

Response: *Comment noted, no changes to proposed regulation necessary.*

Comment: Two comments were related to the penalties section of the regulation. Comments from the Environmental Protection Agency (EPA) suggested that the language throughout the regulation list several potentially responsible parties and other comments during the public hearing suggested that the operator of vehicles found to be violating the regulation should be the party fined.

Response: *Based on the suggestion from EPA that all potentially responsible parties be listed as possible violators, regulations 45.2, 45.3, 45.4, and 45.6 have been changed as indicated below to refer to “person, entity, owner or operator” in all cases. However, as noted during the hearing, DEM believes that the **operator** of vehicles and equipment found in violation of this regulation would be the obvious, although not necessarily the only, responsible party upon whom penalties would be levied.*

45.2 Applicability

These regulations apply to ~~owners or operators of diesel engines and~~ any person, entity, owner or operator with control over the operations of ~~said diesel~~ engines.

45.3 Diesel motor vehicle engine idling

No person, entity, owner or operator shall cause, allow or permit the unnecessary ~~operation~~ idling of the engine of a diesel motor vehicle while said vehicle is stopped for a period of time in excess of five (5) consecutive minutes in any sixty (60) minute period, except as provided in the exemptions listed in section 45.5

45.4 Non-road diesel engine idling

No person, entity, owner or operator shall cause, suffer, allow or permit the unnecessary idling of non-road diesel engines under its control or on its property.

45.6 Penalties

Any person who violates the provisions of this regulation shall be punished by a fine of not more than one hundred dollars (\$100) for the first offense, not more than five hundred dollars (\$500) for each succeeding offense, as stated in RIGLs § 31-16.1-3 and § 31-16.1-4. Penalties shall be assessed against the person, entity, owner or operator of any vehicle or non-road diesel engine found to be in violation of this regulation ~~and against the owner of non-road vehicles found in violation~~. Additionally, penalties may be assessed against any person who allows or permits unnecessary idling to occur on property under their control.

Comment: In written comments received from EPA, clarifications to and the addition of one definition were suggested.

Response: *The definitions 45.1.2 “Diesel motor vehicle” and 45.1.4 “Non-road diesel engine” were modified as suggested. A new definition, 45.1.5 “Unnecessary idling”, was added. The changes are indicated below.*

45.1.2 "Diesel motor vehicle" means a vehicle powered by a diesel engine but shall not include non-road ~~vehicles, farm vehicles, locomotives, aircraft, marine vessels, stationary diesel engines or auxiliary power units.~~ diesel engines, auxiliary power units on on-road motor vehicles, or stationary diesel engines.

45.1.4 "Non-road diesel engine" means a diesel engine intended for use off public highways or in other similar applications, and include, but are not limited to, diesel engines in: farm vehicles, locomotives, aircraft, marine vessels, used in construction equipment, airport ground support equipment, commercial and industrial equipment used off public highways and other similar applications.

45.1.5 "Unnecessary idling" means idling which does not meet one of the exemptions listed in 45.5.

Comment: EPA suggested that language be more consistent in proposed exemptions for diesel motor vehicles and non-road diesel engines and that exemption language indicate that the exemption is only applicable when idling is specifically necessary to perform the functions noted in the exemption.

Response: Regulations 45.5.2, 45.5.4, 45.5.8 and 45.5.9 were modified as suggested:

45.5.2 Vehicles idling when it is necessary to operate defrosting, heating, or cooling equipment to ensure the health or safety of the driver or passengers. In the case of providing heat, the exemption allows idling for up to 15 minutes per hour when temperatures are between 0 degrees and 32 degrees Fahrenheit. Idling for the purpose of providing heat will be allowed as needed when temperatures are below 0 degrees Fahrenheit. A passenger bus may idle a maximum of 15 minutes ~~in any 60 minute period per hour~~ to maintain passenger comfort while non-driver passengers are onboard whenever temperatures are below 50 degrees Fahrenheit

45.5.4 Non-road diesel engines ~~idling when undergoing maintenance or inspections may idle when the engine idles for maintenance, servicing, repairing, or diagnostic purposes, if idling is required for such activity. In addition, a non-road diesel engine may idle as part of a state or federal inspection to verify that all equipment is in good working order, if idling is required as part of the inspection..~~

45.5.8 Airfield maintenance vehicles while actively being used to achieve their intended purpose on a state-owned or operated airport.

45.5.9 Diesel powered engines or vehicles that must continuously operate while stationary in order to ~~function properly~~ perform their intended function, in accordance with all applicable regulations (e.g., an electricity generator which is actively being used to power equipment on-site).

Based on the comments and the response to comments, it is the decision of the Hearing Officer to adopt Air Pollution Control Regulation No. 45 as proposed. The final amended regulation is appended to this decision. The final regulation is to be filed with the Secretary of State.

Stephen Majkut, Chief
Office of Air Resources
Hearing Officer

Date

Approved:

W. Michael Sullivan, Director
Department of Environmental Management

Date